

## **Cr. Appeal (D.B.) No. 2128 of 2023**

[Against the judgment and order of conviction and sentence dated 25.03.2017 (sentenced passed on 27.03.2017) passed by Sri Rajesh Kumar Pandey, learned Additional Sessions Judge-II, Latehar in S.T. No. 103/2009]

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Basant Munda, S/o Manu Munda, R/o Village- Bardoni Khurd, P.O.- Netarhat, P.S. Netarhat, District- Latehar, Jharkhand

... ... **Appellant**

**Versus**

The State of Jharkhand

... ... **Respondent**

.....

For the Appellant

: Mr. Awnish Shankar, Advocate

For the State

: Mr. Manoj Kumar Mishra, A.P.P.

**P R E S E N T**

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

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### **Per Rongon Mukhopadhyay, J.**

Heard Mr. Awnish Shankar, learned counsel for the appellant and Mr. Manoj Kumar Mishra, learned A.P.P. for the State.

**2.** This appeal is directed against the judgment and order of conviction and sentence dated 25.03.2017 (sentenced passed on 27.03.2017) passed by Sri Rajesh Kumar Pandey, learned Additional Sessions Judge-II, Latehar in S.T. No. 103/2009, whereby and whereunder the appellant has been convicted for the offences punishable u/s 302 and 201 of the IPC and has been sentenced to undergo R.I. for life along with a fine of Rs. 10,000/- for the offence punishable u/s 302 of the IPC and in default in payment of fine to undergo S.I. for a further period of 08 months. He has further been sentenced to undergo R.I. for 05 years along with a fine of Rs. 10,000/- for the offence punishable u/s 201 of the IPC and in default in payment of fine to undergo S.I. for 08 months. All the sentences were directed to run concurrently.

**3.** The prosecution case arises out of the fardbeyan of Rajeshwar Nayak recorded on 25.02.2009, in which, it has been stated that on 24.02.2009 at 6:00 P.M. he and his brother Manjeet

Nayak had returned home and asked his sister Anita Devi about the whereabouts of his father, at which, Anita Devi disclosed that he had left the house at 10:00 A.M. to withdraw his pension without having his food. The father of the informant used to work as a labour for Tinu Kindo. In the meantime, the mother of the informant returned and all of them went in search of his father. On the way they had met Milu Oraon who disclosed that he had seen in the afternoon the father of the informant and Tinu Kindo sitting near the pond of Tinu Kindo with their legs in the water. When they went near the pond the *gamcha* of his father was found but there was no trace of the father of the informant. When an intense search was made in the pond the dead body of his father was fished out with his legs tied with his *lungi* and marks of injury with a pointed weapon were found in his body.

Based on the aforesaid allegations Netarhat P.S. Case No. 04/2009 was instituted against unknown persons for the offence punishable u/s 302/34 of the IPC. On completion of investigation charge-sheet was submitted against the accused /appellant and after cognizance was taken the case was committed to the Court of Sessions where it was registered as S.T. No. 103/2009. Charge was framed against the accused for the offences punishable u/s 302 and 201 of the IPC which was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

**4.** The prosecution has examined as many as seven witnesses in support of its case.

**5.** P.W.1 (Rajeshwar Nayak) is the informant of the case and the son of the deceased. He has stated that the incident is of two years back and he had gone to Tanginath on the occasion of Shivratri. In the evening when he returned to his house he had asked his sister regarding the whereabouts of his parents, at which, his sister had disclosed that his mother had gone to

withdraw old age pension while his father had gone to the house of Tinu Kindo for work. When a search was being made in the evening he met Milu Oraon on the way who had disclosed that at 12:00 Noon he had seen his father sitting near the pond with his legs in the water. When they reached the pond the *gamcha* of his father was found lying nearby. While searching the dead body of his father was detected in the pond with both his legs tied with a *gamcha*. There were marks of injury on his body inflicted with a pointed weapon. The Police were informed and his fardbeyan was recorded near the pond. He had not signed on the fardbeyan as he is not literate. He had given his thumb impression in the fardbeyan.

In cross-examination, he has deposed that his father did not have any enmity with anyone. His father used to drink liquor. He had not seen anyone assaulting his father.

**6.** P.W.2 (Manjeet Nayak) is another son of the deceased who has stated that he and his brother had gone to Tanginath and when they returned home in the evening they did not find their father at home. During search of his father, he had met on the way Milu Oraon who had disclosed about seeing his father sitting near the pond of Tinu Kindo with his legs in the water at around 12:00 Noon. On search of the pond apart from the *gamcha* of his father his dead body was also found which had marks of injury over it. Information about the incident was given to Netarhat P.S. from the phone of Tinu Kindo. His statement was recorded by the Police.

The defence has declined to cross-examine this witness.

**7.** P.W.3 (Sarhulla Munda) has stated that on the date of the incident at around 5:00-6:00 P.M. he had seen Basant Munda assaulting and taking Ranjit Nayak towards the pond. On the next day when he met Basant Munda he had disclosed that he

had murdered Ranjit Nayak and has thrown his body in the pond. He had disclosed about the said fact to the Police as also to the villagers.

In cross-examination, he has deposed that when he had witnessed the assault he had called out Basant Munda but when he was threatened by Basant Munda he had fled away. He does not have any enmity with Basant Munda. His statement was recorded by the Police. He had not informed the villagers that Basant Munda was committing assault upon Ranjit Nayak. There was no previous enmity between Basant Munda and Ranjit Nayak. He has deposed that when Basant Munda was dragging Ranjit Nayak and assaulting him there were no other persons present except him. After witnessing the incident he had not informed the family members of Ranjit Nayak about the same. On the date of occurrence he had consumed wine offered by Basant Munda. He had seen the incident from a distance of 150 yards and the Sun had already set in by then.

**8.** P.W.4 (Gupteshwar Singh) has stated that the incident is of five years back at around 7:00 P.M. when Sarhulla Munda had disclosed in front of the villagers that Basant Munda by making assault upon Ranjit Nayak had taken him to the pond of Tinu Kindo and by tying his hands and legs with his own *lungi* had thrown him on the pond. When the villagers came to know about the incident they had taken out the dead body from the pond. There were marks of injury on the body of Ranjit Nayak inflicted with pointed weapon.

In cross-examination, he has deposed that he had not seen the incident with his own eyes. At the place of occurrence the slippers of Basant Munda were recovered. He had disclosed the name of Basant Munda on suspicion.

**9.** P.W.5 (Prasan Tirkey) has stated that on the date of the incident Sarhulla Munda had disclosed to the villagers that

Basant Munda had taken Ranjit Nayak to the pond and threw him on the pond. When the body of Ranjit Nayak was fished out from the pond there were marks of injury on his body. His hands and legs were tied with a *lungi*.

In cross-examination, he has denied to have seen the incident. He does not know about any previous enmity between the accused and the deceased. He has stated about Basant Munda on the basis of what has been disclosed to him by Sarhulla Munda.

**10.** P.W.6 (Amardeep Nayak) has stated that about five years back at around 6:00-7:00 P.M. Sarhulla Munda had disclosed before him and the villagers that Basant Munda had fed Ranjit Nayak and thereafter assaulted him and he did not even listen when Sarhulla Munda had objected. After the assault Ranjit Nayak was thrown by Basant Munda in the pond. When the body of Ranjit Nayak was taken out from the river marks of injury were found on his person. His hands and legs were tied with his own *lungi*.

In cross-examination, he has deposed that he had not seen the incident. No article belonging to the accused was recovered from the place of occurrence.

**11.** P.W.7 (Ratan Nayak) has stated that he had returned from Tanginath and started searching for Ranjit Nayak but he could not be found. A villager Leelawati Oraon had disclosed that Bhilu Oraon had stated to Rajesh Nayak that his father is sleeping near the pond. When the villagers searched the pond the dead body of Ranjit Nayak was recovered. Halka Nayak had told him that Churla Munda, Basant Munda and Ranjit Nayak were seen together and Basant Munda was dragging Ranjit and when Halka Nayak objected he was threatened by Basant Munda and thereafter Basant Munda murdered Ranjit Nayak and threw him in the pond.

In cross-examination, he has deposed that on the

date of occurrence he had returned home at night from Tanginath. He had not witnessed the incident.

**12.** The statement of the accused was recorded u/s 313 Cr.P.C., in which, he has denied his complicity in the murder.

**13.** It has been submitted by Mr. Awnish Shankar, learned counsel appearing for the appellant that the appellant has been implicated only on the basis of suspicion. The evidence of P.W.3 has primarily been relied upon by the prosecution but the same suffers from inherent contradictions and cannot at all be concluded to be truthful. He has further submitted that though the fardbeyan of the informant was signed by him but in his evidence he has deposed that he is an illiterate and does not know how to sign which furthermore creates a doubt over the very initiation of the prosecution case.

**14.** Mr. Manoj Kumar Mishra, learned A.P.P. has submitted that the evidence of P.W.3 has been corroborated by the evidence of other witnesses and the same indicates that it was the appellant who had committed the murder of Ranjit Nayak.

**15.** We have heard the learned counsel for the respective sides and have also perused the Trial Court Records.

**16.** The First Information Report was instituted against unknown persons on account of the recovery of the dead body of Ranjit Nayak from the pond with his legs tied with his own *lungi* and having marks of injury in his body. The informant had taken the name of Milu Oraon who had disclosed to him about his father having been seen near the pond sitting with his legs in water and this information led to a search being conducted ultimately resulting in the recovery of the dead body. The informant (P.W.1) has reiterated this version in his evidence during trial and his brother (P.W.2) has echoed the same version. The prosecution surprisingly has not examined Milu Oraon. The path of the case changed its course on a purported eyewitness account of Sarhulla

Munda (P.W.3) who claims to have seen the incident of assault committed by the appellant upon Ranjit Nayak and the appellant seems to have later on confided to him about the murder of Ranjit Nayak committed by him. However, the evidence of P.W.3 appears to be smudged with contradictions. Even after witnessing the assault he had neither informed the villagers nor the family members of Ranjit Nayak and the nonchalant behavior on the part of P.W.3 speaks volumes about the untrustworthy nature of his evidence. According to P.W.3, the appellant had disclosed to him about the murder committed by him but such extra judicial confession would have no bearing on the implication of the appellant as the perpetrator of the offence, more so, when the dead body was recovered from the pond on account of the deceased being last seen near the pond as disclosed by Milu Oraon. The evidence of P.W.3 appears to be an afterthought not backed up by any cogent and corroborative evidence. The evidence of P.Ws. 4, 5 and 6 appears to rely on the purported disclosure of P.W.3 but as we have noted above the discovery of the dead body was made much prior to the so called confession of the appellant before P.W.3. P.W.7 seems to have given an altogether different version as to how the body of Ranjit Nayak was recovered. The postmortem report has been marked as Exhibit-1 and the cause of death has been opined to be due to Myocardial infarction and heart failure. The prosecution has failed to examine the Doctor as well as the Investigating Officer. The overall conspectus of the case would, therefore, indicate that there are no eyewitnesses to the occurrence and the reliance of the prosecution case in the evidence of P.W.3 is misplaced.

**17.** We therefore, on the basis of the discussions made hereinabove set aside the judgment and order of conviction and sentence dated 25.03.2017 (sentenced passed on 27.03.2017) passed by Sri Rajesh Kumar Pandey, learned Additional Sessions

Judge-II, Latehar in S.T. No. 103/2009.

**18.** This appeal is allowed.

**19.** Since the appellant is in custody, he is directed to be released immediately and forthwith, if not, wanted in any other case.

**(Rongon Mukhopadhyay, J.)**

**(Pradeep Kumar Srivastava, J.)**

***High Court of Jharkhand at Ranchi***

*Dated, the 31<sup>st</sup> day of July, 2024.*

*A. Sanga/NAFR*